

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellee,

v.

ROBERT JAKE PALACIOS,
Defendant-Appellant.

SUPREME COURT NO. 2013-SCC-0041-CRM
SUPERIOR COURT NOS. 13-0011A, 11-0257, 11-0263

OPINION

Cite as: 2014 MP 16

Decided December 4, 2014

Daniel T. Guidotti, Saipan, MP, for Defendant-Appellant Robert Jake Palacios
James B. McAllister, Assistant Attorney General, Office of the Attorney General, Saipan, MP, for
Plaintiff-Appellee Commonwealth of the Northern Mariana Islands

BEFORE: ALEXANDRO C. CASTRO, Chief Justice; JOHN A. MANGLONA, Associate Justice; DAVID A. WISEMAN, Justice Pro Tem.

MANGLONA, J.:

¶ 1 Defendant-Appellant Robert Jake Palacios (“Palacios”) appeals his sentence for theft, 6 CMC § 1602. Palacios seeks to have his sentence vacated because: (1) the trial court violated his federal due process rights¹ by imposing a sentence that exceeded the statutory maximum supported by the factual basis in the plea agreement, and (2) the trial court abused its discretion by imposing the maximum sentence. For the reasons discussed below, we AFFIRM Palacios’ sentence.

I. Facts and Procedural History

¶ 2 In a brazen criminal act, Palacios stole several items from an assistant attorney general in a Commonwealth courtroom. Subsequently, Palacios was charged with Theft, 6 CMC § 1602, and Criminal Contempt, 6 CMC § 3307.

¶ 3 The Commonwealth negotiated a plea agreement with Palacios. He agreed to “plea[d] guilty to Count I: Theft.” *Commonwealth v. Palacios*, No. 13-0011A (NMI Super. Ct. July 1, 2013) (Global Plea Agreement at 2) [hereinafter Plea] (emphasis omitted). In exchange, the Commonwealth agreed to “dismiss all other counts with prejudice.” *Id.* In the plea agreement, the charges section explained Palacios was charged with “Count I: Theft, in violation of 6 CMC § 1602(a) and punishable by 6 CMC § 1601(b)(2) and § 4101(a), with a maximum sentence of five years imprisonment”² Plea at 1 (emphasis omitted). The trial court accepted the plea agreement, entered a judgment, and ordered a presentence investigation report.

¶ 4 At the sentencing hearing, the trial court adopted the facts set forth in presentence report. In the report, the victim explained that the value of the stolen property was \$265.95. While Palacios disagreed with the valuation, he admitted he did not have any contrary evidence and the valuation was not a basis to withdraw the plea (nor did he attempt to withdraw the plea at any point during the hearing).

¶ 5 After the parties discussed the presentence report, they discussed Palacios’ background, his prior convictions, his children, his failure to demonstrate an interest in rehabilitation, and the nature of the crime. At the conclusion of the hearing, the trial court sentenced Palacios to five years in prison.

¹ Palacios did not clearly assert in his briefing whether his federal constitution or Commonwealth Constitution rights were infringed. However, his brief focuses on federal constitution cases so we proceed as if he asserted a violation of the federal constitution. In the future, parties must clearly indicate the source of their claim or risk having the Court deem the argument waived. *See Commonwealth v. Inos*, 2013 MP 14 ¶ 11 (declining to address a federal constitutional claim because the parties did not squarely brief it).

² This mirrored the explanation of the charge in the Information. *Palacios*, No. 13-0011A (NMI Super. Ct. Jan. 9, 2013) (Information at 1) (stating that Palacios took “property having a value more than two hundred and fifty dollars (\$250.00) and less than twenty thousand dollars (\$20,000), in violation of 6 CMC § 1602(a) and made punishable by 6 CMC §§ 1601(b)(2) and 4101(b)”).

Subsequently, the trial court issued a Sentencing Order that justified the sentence by discussing many of the issues the trial court talked about or heard during the hearing, including the court’s desire to stop Palacios’ pattern of criminal activity.

¶ 6 Palacios now appeals.

II. Jurisdiction

¶ 7 We have jurisdiction over trial court final judgments and orders, NMI CONST. art. IV, § 3; 1 CMC § 3102(a).

III. Standards of Review

¶ 8 Palacios raises two issues. First, he contends the trial court violated his federal due process rights by sentencing him for felony theft because there were not sufficient facts to support that sentence. We review this issue for plain error because Palacios did not object to the plea agreement at trial. *See Commonwealth v. Quitano*, 2014 MP 5 ¶ 10 (reviewing jury instructions for plain error when the defendant did not object to the instructions at trial). Second, Palacios asserts that the trial court abused its discretion by imposing the maximum sentence. We review the trial court’s sentencing decision for abuse of discretion. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 135.

IV. Discussion

¶ 9 We address Palacios’ due process claim before turning to the trial court’s sentencing discretion.

A. Due Process

¶ 10 Palacios argues that the trial court violated his federal due process rights by sentencing him for felony theft because the sentence exceeded the statutory maximum supported by the factual basis in the plea agreement. According to Palacios, the factual basis in the plea agreement did not support a felony theft sentence because he did not admit an essential element of that crime: the amount stolen.³ Because this issue was not presented below, the Court reviews the claim for plain error. *See Quitano*, 2014 MP 5 ¶ 10 (reviewing jury instructions for plain error when the defendant did not object to the instructions at trial).

¶ 11 Palacios contends the trial court erred, specifically by violating his federal due process rights, when the court sentenced him for a crime without a sufficient factual basis. But the federal constitution does not require a sufficient factual basis for a plea agreement. The United States Supreme Court

³ The assertion that he did not admit to the amount stolen is misleading. Palacios implicitly, if not explicitly, admitted that the value of the goods he stole was in a specific range when he pled guilty to Count I, which was described in the plea agreement charges section as “theft, in violation of 6 CMC [§] 1602(a) and punishable by 6 CMC § 1601(b)(2).” Plea at 1 (emphasis omitted). Section 1601(b)(2) sets forth a range for the value of the stolen goods—\$250 but less than \$20,000—and Palacios’ acceptance of the plea referencing that provision functions as an admission that the goods he stole were in that range. Furthermore, the Information explicitly states the dollar range and the plea agreement incorporated the Information by reference. This reinforces that Palacios knew, or should have known, he was admitting to the amount stolen.

expressed this idea in *McCarthy v. United States*, 394 U.S. 459 (1969). In *McCarthy*, a defendant contended his plea should be set aside because the trial court failed to comply with Federal Rule of Criminal Procedure 11 by, among other things, failing to determine whether there was a factual basis for the plea. *Id.* at 463. While addressing whether this constituted an error, the Supreme Court acknowledged that “the procedure embodied in [Federal Rule of Criminal Procedure] 11 has not been held to be constitutionally mandated.” *Id.* at 465. Since then, various circuits have reaffirmed this principle. *E.g.*, *Willbright v. Smith*, 745 F.2d 779, 780 (2d Cir. 1984). For example, the Ninth Circuit was recently presented with an appeal of a prisoner’s habeas petition that claimed the state trial court committed a constitutional violation by failing to find a factual basis for the plea agreement. *Loftis v. Almager*, 704 F.3d 645, 648 (9th Cir. 2012). Affirming the trial court’s decision denying the petition, the Ninth Circuit explained that there was no cognizable constitutional claim because the factual basis requirement is imposed by rule and not by the constitution. *Id.* Accordingly, we hold that Palacios has not demonstrated that his due process rights were violated because the United States Constitution does not require the trial court to find a sufficient factual basis.

B. Sentencing Discretion

¶ 12 Palacios next asserts that the Court should vacate his sentence because the trial court abused its discretion by imposing the maximum sentence without considering several mitigating factors. Our review begins with the basic proposition that the trial court “enjoy[s] nearly unfettered discretion in determining what sentence to impose.” *Camacho*, 2002 MP 6 ¶ 135. Based on this principle, we review the trial court’s sentencing decision for abuse of discretion. When reviewing a sentence for abuse of discretion, reversal is appropriate only if no reasonable person would have imposed the same sentence. *E.g.*, *Banks v. State*, 732 So.2d 1065, 1068 (Fla. 1999); *State v. Branch*, 919 P.2d 1228, 1235 (Wash. 1996); *State v. Gerrard*, 584 P.2d 885, 887 (Utah 1978).

¶ 13 Under this deferential standard, Palacios’ argument is unpersuasive because a reasonable person could justify the sentence imposed by the trial court. Here, the trial court—at the sentencing hearing and in the Sentencing Order—discussed significant aggravating factors.⁴ The trial court highlighted, among other things, Palacios’ blatant disrespect for the trial court by committing a crime in the courtroom, his lengthy criminal record, his multiple chances to change his behavior, and the court’s desire to see Palacios rehabilitated. Even in light of the mitigating factors Palacios presented, a reasonable person could conclude Palacios’ significant criminal history and nature of the crime warranted the maximum sentence. This is enough to uphold the sentence. *See Camacho*, 2002 MP 6 ¶ 137 (affirming reasonable sentence).

⁴ In the Sentencing Order, the aggravating factors the trial court addressed included: (1) robbing an officer of the court while in the court; (2) averaging one conviction every year of his adult life; (3) intervening court action in the past; (4) failing to change his ways despite the birth of his child; and (5) wanting to help Palacios by interrupting the defendant’s criminal streak. These factors were also discussed during the sentencing hearing.

Because the sentence is reasonable, we conclude the trial court did not abuse its discretion by sentencing Palacios to five years in prison for theft.

V. Conclusion

¶ 14 For the reasons discussed above, we AFFIRM Palacios' sentence for felony theft.

SO ORDERED this 4th day of December, 2014.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLONA
Associate Justice

/s/
DAVID A. WISEMAN
Justice Pro Tem